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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,705	01/26/2001	Christopher S. Gouge	MS155721.2	6801
27195	7590	06/20/2006	EXAMINER	
AMIN & TUROCY, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			INGBERG, TODD D	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/770,705

Applicant(s)

GOUGE ET AL.

Examiner

Todd Ingberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Reopen to add new grounds of rejections.

Claims 1 – 24 have been examined.

#### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a signal directly or indirectly by claiming a medium and the Specification recites evidence where the computer readable medium is define as a “*wave*” (such as a carrier wave) . In that event, the claims are directed to a form of energy, which at present the office feels does not fall into a category of invention. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility.

A communications signal transmitting between two computers a data packet is not tangible. Please, review the current policy on 35 U.S.C. 101 by reviewing the information at the URL above.

Claim 23

A data packet transmitted as a communication signal between at least two computer processes, comprising: a configurable module having: one or more configurable data elements, wherein one or more default values for the one or more configurable data elements are available; one or more non-configurable data elements describing the one or more configurable data elements; and one or more transformation instructions that facilitate configuring the one or more configurable data elements, wherein the instructions are employed to facilitate installation of the one or more

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configurable data elements into a target data set residing in at least one of the at least two computer processes.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 24 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. Microsoft (Assignee) Visual Source Safe (VSS) published 1997.

**Claim 1**

VSS anticipates a computer implemented system that facilitates software installation (VSS, page 112, merging of software in configuration management tool and VSS, installing occurs in deploying content, pages 71, 81, 89 and 95) comprising: a transformation component that receives one or more configurable data elements (VSS, page 110, Working with Branches, two files) , and one or more non-configurable data elements describing the one or more configurable data elements (VSS, pages 89 – 95, the merge uses a difference that is not configurable but the contents are to an extent – part will be used and part will not - also page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable) ; and a merge component that employs one or more transformation instructions that configures the one or more configurable data elements to facilitate the installation ( in view of the sections above the merge performs a difference of two files then uses the difference to make one – the result of the difference is merge instructions) of the one or more configurable data elements into at least one target data set (VSS, page 112 – 117, Merging Branches).

**Claim 2**

The system of claim 1, wherein the one or more configurable data elements are stored in a data structure associated with the configurable module (two files as per claim 1).

**Claim 3**

The system of claim 2, wherein the data structure is a metadata item description table (the result of the difference as per claim 1).

**Claim 4**

The system of claim 1, wherein the one or more non-configurable data elements are stored in a data structure associated with the configurable module (VSS, pages 89 – 95, the merge uses a

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difference that is not configurable but the contents are to an extent – part will be used and part will not - also page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable).

**Claim 5**

The system of claim 4, wherein the one or more non-configurable data elements (VSS, pages 89 – 95, the merge uses a difference that is not configurable but the contents are to an extent – part will be used and part will not - also page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable) are stored in a metadata item description table (the result of the difference as per claim 1).

**Claim 6**

The system of claim 1, wherein the one or more transformation instructions are stored in a data structure associated with the configurable module. As per claim 2.

**Claim 7**

The system of claim 6, wherein the one or more transformation instructions are stored in a transformation instruction table (The results of the difference guides the merge in a for of instruction as per claim 1).

**Claim 8**

Tire system of claim 2 wherein the data structure includes at least one of a name of a configurable data element, and a semantic meaning for the configurable data element (The results of the difference guides the merge in a for of instruction as per claim 1- the semantics being the semantics that guided the difference operation).

**Claim 9**

VSS anticipates a data interpretation system executing on at least one computer, comprising: a data interpretation component that: receives one or more configurable data elements from a configurable module (files as per claim 1), wherein the one or more data elements include configuration information related (difference information as per claim 1) to installing the one or more data elements into a software program (VSS, page 112, merging of software in configuration management tool and VSS, installing occurs in deploying content, pages 71, 81, 89 and 95); applies one or more transformation instructions from the configurable module to the configurable data elements to configure the configurable data elements (the results of the difference are a form of instruction as per above), and installs the configurable data elements into a target data set (VSS, page 112 – 117, Merging Branches) based at least in part upon the configuration information (What two files to merge based on the Branch of claim 1).

**Claim 10**

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The system of claim 9, further comprising a user interface to enable a user to query the configurable module to determine which of the one or more data elements are configurable (VSS, page 114, Binary files are not able to be merged- see user interface).

**Claim 11**

The system of claim 9 further comprising: a merging component adapted to receive one or more updated configurable data elements from the data interpretation component and adapted to provide the one or more updated configurable data elements to a target data set. (The difference operation and Merge operation of claim 1)

**Claim 12**

The system of claim 9 further comprising: an authoring schema that describes a configurable module. (VSS, pages 112 – 113, Merging Branches – Figure 8-4).

**Claim 13**

VSS anticipates a method that is executed on one or more computer for installing a configurable data set into a target data set (VSS, page 112, merging of software in configuration management tool and VSS, installing occurs in deploying content, pages 71, 81, 89 and 95), comprising:

- obtaining one or more data elements from a configurable module (as per claim 1);
- including metadata that describes the configuration options of the configurable data set (branch as per claim 1);

- obtaining one or more transformation instructions from the configurable module (as per claim 1 - difference); and applying the one or more transformation instructions to a copy of the one or more data elements from the configurable module to configure the one or more data elements for installation into the target data set (VSS, page 112 - 117, Working with Branches and merging branches as per claim 1).

**Claim 14**

The method of claim 13, further comprising: identifying a target data set; and inserting the updated data elements into the target data set (VSS, page 112 – 117, Merging Branches).

**Claim 15**

The method of claim 13 further comprising: presenting one or more configuration options to a user, accepting one or more configuration selections from the user; and selectively configuring the one or more data elements based on the user's configuration selections. As per claim 10 user selecting branches for merge operations.

**Claim 16**

A computer readable medium containing computer executable instructions operable to perform the method of claim 13. (VSS, is a commercial product – software product – that performs the functions of claim 1).

**Claim 17**

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VSS anticipates a computer implemented method for creating a configurable data module, comprising:

- creating a configurable data set having one or more configurable data elements;
- creating one or more data structures containing information associated with one or more configurable data elements; and displaying the information to a software program to facilitate installing the configurable data set into the software program. As per claim 1.

**Claim 18**

The method of claim 17 wherein creating a configurable data set includes: identifying one or more attributes of the one or more data elements; and establishing one or more default values for the attributes of the one or more data elements. As per claim 1.

**Claim 19**

The method of claim 17 wherein creating the one or more data structures (As per claim 1) further comprises:

- identifying one or more locations within a data set that are configurable;
- identifying one or more configuration options (VSS, page 113, Figure 8-4);
- creating one or more instructions concerning how to configure the one or more locations; and storing the instructions in the one or more data structures (The results of the difference guides the merge in a for of instruction as per claim 1).

**Claim 20**

The method of claim 19, wherein the one or more data structures are stored in the configurable data module. ( files as per claim 1).

**Claim 21**

A computer readable medium containing computer executable instructions operable to perform the method of claim 17. (VSS, is a commercial product – software product – that performs the functions of claim 1).

**Claim 22**

VSS anticipates a system that is executed on one or more computer for installing a configurable data set into a target data set (VSS, page 112, merging of software in configuration management tool and VSS, installing occurs in deploying content, pages 71, 81, 89 and 95), comprising: a configurable module having configurable data elements representing a configurable data set and non-configurable data elements representing a portion of the configurable data set (VSS, page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable); a user interface for selecting which configurable data element to modify (VSS, page 113, Figure 8-4); and a data interpretation system for receiving the configurable and non-configurable data elements (VSS, pages 89 – 95, the merge uses a difference that is not configurable but the contents are to an extent – part will be used and part will not - also page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable) from the

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configurable module and applying the transformation instructions (VSS, pages 89- 95, result of difference is the instructions for merging) applicable to the user selections associated with the configurable data elements to enable installing the configurable data set into the target data set (VSS, page 112 – 117, Merging Branches).

#### **Claim 23**

VSS anticipates a data packet adapted to be transmitted as a communication signal between at least two computer processes (VSS, pages 23- 25, 27-28, the product supports Client server as indicated by the installation of the product), comprising: a configurable module having:

one or more configurable data elements, wherein one or more default values for the one or more configurable data elements are available; one or more non-configurable data elements (VSS, pages 89 – 95, the merge uses a difference that is not configurable but the contents are to an extent – part will be used and part will not - also page 114, binary files describe the one or more configurable data elements binary format being compiled or linked in object code format – describing the source which is configurable) describing the one or more configurable data elements (As per claim 1) ; and one or more transformation instructions that facilitate configuring the one or more configurable data elements (As per claim 1), wherein the instructions are employed to facilitate installation of the one or more configurable data elements into a target data set (VSS, page 112 – 117, Merging Branches) residing in at least one of the at least two computer processes (VSS, pages 23- 25, 27-28, the product supports Client-Server as indicated by the installation of the product).

#### **Claim 24**

VSS anticipates a computer readable medium having stored thereon a data structure, comprising:

a first data field containing one **or more configurable data elements** (as per claim 1), wherein one or more default values for the one or more configurable data elements are available;

a second data field containing one or more non-configurable data elements describing the one or more configurable data elements ( as per claim 1); and

a third data field containing one or more transformation instructions that facilitate configuring the one or more configurable data elements to load the configurable data elements into a software program (VSS, page 112 – 117, Merging Branches).

Examiner selected the bold limitation in view of the OR.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1 – 24 are have been considered but are moot in view of the new ground(s) of rejection. Also, note the Patent Office's new focus for 35 U.S.C. §101.

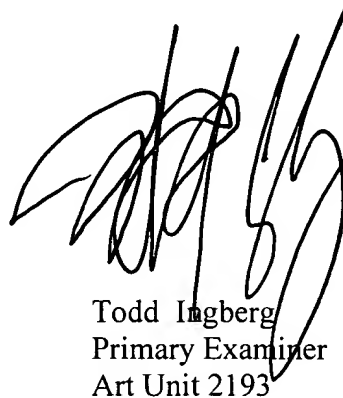
### ***Correspondence Information***

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Todd Ingberg  
Primary Examiner  
Art Unit 2193

TI